**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**COMPANY APPLICATION No. 567 of 2006**
**In**
**COMPANY APPLICATION No. 401 of 2006**
**In**
**OFFICIAL LIQUDATOR REPORT No. 74 of 2004**
**With**
**COMPANY APPLICATION No. 623 of 2006**
**In**
**COMPANY PETITION No.139 of 1988**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE M.R. SHAH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**M/S. KALANTRY TEXTILE CONSULTANTS - Applicant(s)**
**Versus**
**O.L. OF AHMEDABAD JUBILEE MILLS CO. LTD. & 6 - Respondent(s)**

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**Appearance :**
MR MR PAVAN S GODIAWALA for Applicant(s) : 1 in Company Application No.567 of 2006 and Mr. Ajay L. Pandav for Applicant(s) : 1 in Company Application No. 623 of 2006.
OFFICIAL LIQUIDATOR for Respondent(s) : 1,
MS AMEE YAJNIK for Respondent(s) : 1,
None for Respondent(s) : 2 - 7.

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**CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**

**Date : 01/12/2006**

**COMMON ORAL JUDGMENT**

1. Company Application No. 567 of 2006 is filed by

M/s. Kalantry Textile Consultants for extension of time and for an appropriate order directing the Official Liquidator of Ahmedabad Jubilee Mills Company Limited to remove the encroachment of watchmen illegally occupying quarter and to comply with the order dated 28.7.2006 passed in Company Application No.401 of 2006. It is also further prayed to restrain the Official Liquidator from taking over the possession of the property from the applicant till the peaceful and vacant possession of the said illegal encroached premises is given to the applicant and the said premises is demolished and dismantled and removed by the applicant from the land on which the same is situated.

2. It appears from the record that the properties of company in liquidation i.e. building structure and staff quarters of the mills premises was sold pursuant to the order passed by this Court and the sale was confirmed vide order dated 25.1.2005 in favour of the successful bidder i.e. M/s. Monali Textile and

the applicant claims to be the nominee of M/s. Monali Textile in whose favour the sale was confirmed. It appears that the said properties were sold for a consideration of Rs.2.16 Crores. It is the case on behalf of the applicant that except the premises occupied by the applicant of Company Application No. 623 of 2006, the entire other building structure has been demolished and dismantled, however, in view of the fact that the applicant of Company Application No.623 of 2006 has encroached upon the premises and is in illegal occupation of the said quarter, it is not possible for the applicant to dismantle the same and consequently, not in a position to remove the same and hand over the possession of the entire land to the Official Liquidator. During the pendency of the aforesaid Company Application No. 567 of 2006, the Official Liquidator has served a notice upon the aforesaid Shri Jivanji Vajuji Waghela, who is in illegal occupation of the quarter to hand over the possession and therefore, the present Company Application No. 623 of 2006 has been

filed. It is submitted by the person who is in illegal occupation of the quarter that a Civil Suit is filed before the City Civil Court, Ahmedabad. However, considering the provisions of the Companies Act; 1956, the said suit is not maintainable and any suit without the prior permission of this Court is a nullity. Without entering into the larger question, the applicant of Company Application No. 623 of 2006 has tendered an undertaking before this Court that he will vacate and handover the peaceful and vacant possession of the premises occupied by him within two months. He has also undertaken that along with he, other family members will also hand over the peaceful and vacant possession of the premises occupied by them and it is requested to grant some reasonable time as mentioned in the undertaking. The learned advocate appearing for the applicant in Company Application No. 623 of 2006 has also submitted before the Court that the Civil Suit and/or the proceedings before the City Civil Court, Ahmedabad, will be withdrawn within a period of

two weeks from today. In the peculiar facts and circumstances and without citing the same as precedent, the applicant of Company Application No. 623 of 2006 is granted two months time to vacate the premises and hand over the peaceful and vacant possession of the premises/quarter occupied by him. All the family members, who are residing with the applicant, are also directed to hand over the peaceful and vacant possession of the quarter occupied by them to the Official Liquidator on or before 31st January, 2007. If the possession, as stated above, is not handed over on or before 31st January, 2007, it will be open for the Official Liquidator to get the possession from the said person and/or the persons in occupation of the aforesaid quarter by taking even coercive action.

3. Company Application No. 623 of 2006 is accordingly disposed of.

4. So far as Company Application No. 567 of 2006 is concerned, in view of the order passed in

Company Application No. 623 of 2006, the applicant of Company Application No. 567 of 2006 is granted time to dismantle and demolish the structure which could not have been done as the same is occupied by the applicant of Company Application No. 623 of 2006 upto 28th February, 2007. As this Court has granted the time to the applicant of Company Application No. 623 of 2006, the applicant of Company Application No.567 of 2006 is hereinafter not required to make any payment to the Official Liquidator which was directed to be paid pursuant to the order passed by this Court earlier.

5. Company Application No. 567 of 2006 is also disposed of accordingly.

[ M.R.SHAH, J.]

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